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Research Article

European Legal view on Termination of Pregnancy

Abstract

Pregnancy, another state or gravidity, is the state of a woman who carries a new being. The fertilization and ends with childbirth. The fertilized egg develops and goes through several different stages of development: embryo and fetus. Diagnosing pregnancy is based on safe and unsafe signs, and most reliable evidence that ultrasound. Pregnancy lasts nine months and the vast majority of women is well tolerated. Unfortunately, there are women who do not stand up well due to certain health complications that can occur, it is necessary to perform abortions. The task of this paper is to consider abortion the legal aspects.

Introduction

While a number of couples use different methods to limit their fertility and prevent new life, on the other hand a number of them – and it is constantly growing – has only one desire: to acquire own child [1]. To accomplish this desire them no price is too high. Own desires, social pressures, as well as scientific-technical optimism and promises of reproductive medicine encourage them to constantly new attempts. The results do not remotely monitor all efforts, suffering and expenses incurred. Some of today's conventional medical methods are, morally speaking, problematic and contrary to human dignity.

The acceptance of the technical capabilities may at first glance mean relief and re-gaining control over the problem of infertility and their own bodies, and thus of life plans [1]. In reality, such a decision is an admission of its own helplessness; control over the body entrusted to experts. For the person it means subjecting extensive tests, the control of hormones, the daily blood tests, ultrasound scans, hospital stays for taking eggs or expressed words of one directly affected person, "... the constant hopes and fears and infinitely many disappointments." This regime shall be subject to the overall life of the person concerned, and often the spouse. So much investment of time to solve the problem of infertility is lack of time for other areas of life, profession and social relations, even among the married and cohabiting partners.

It should be noted that many couples long trying to become parents, but they do not manage because of infertility. The spouse or common-law couples or women, are entitled to notice of the possible forms of natural family planning, the treatment options for infertility and other ways to achieve parenthood (For example, adoption), especially if they are both women and men infertile [2].

Pregnancy

Pregnancy is one of the happiest periods in a woman's life if it is planned and desired. Pregnancy is a period that begins at fertilization, and ends with the birth of a child. It takes nine calendar months or 40 weeks, or 280 days. Pregnancy is a period when a caution expectant mothers, pregnant women to give birth to a healthy, adopted child, is able to live outside of the uterus. If there is an interruption of pregnancy before 28 weeks, this interruption is called abortion because the fetus is not viable outside of the uterus. Childbirth is called every termination of pregnancy after 28 weeks. According to the time when it happens, birth can be premature, at the time and later, a newborn undelivered (prematurus), issued (maturus) and transferred (postmaturus).

Over the past two decades medical science has provided us with greatly increased knowledge of the sources of harm to unborn children [3]. These include, but are not limited to, illnesses of the pregnant woman, side-effects of prescribed medication she is taking, environmental chemicals and radiation, the use of alcohol or tobacco or illegal drugs by the pregnant woman, and defects inherited from the genetic makeup of the biological parents. To a considerable but lesser extent, medical science now offers increased ability to prevent or reduce these harms to the fetus. Medicine can sometimes predict the risk of genetic or other harm in time to enable prospective parents to modify potentially harmful behavior, use new reproductive technologies to reduce the risk, or even avoid conception altogether. It can often diagnose genetic defects or medical problems of the fetus before birth and, in some cases, intervene either to abort a seriously defective fetus or to provide therapy in utero.

Medically assisted insemination

Medically assisted insemination means biomedical procedures to heal proven infertility of one or both partners and the application of modern, scientifically proven biomedical achievements enables connection of male and female gametes to achieve pregnancy and childbirth. Methods of medically assisted insemination is now treated 70 – 80 % of all causes of infertility. Apply only when all other methods of infertility treatment proved unsuccessful.

The right to medically assisted insemination are of legal age and legal capacity of women and men who are married or in common-law and that due to the age and general health condition capable of parenting a child [2]. The right to medically assisted insemination has adult, legally capable woman who does not live in marriage, common-law or same-sex unions, whose previous fertility treatment proves unsuccessful or hopeless, and that is due to the age and general health condition capable of parenting a child. The right to medically assisted insemination and the person who has the decision on deprivation of legal capacity is not restricted to making statements concerning personal status. The right to medically assisted insemination at the expense of the Croatian Institute for Health Insurance has a wife normally until they reach 42 years of age. The doctor who performed the procedure medically assisted reproduction, for particularly justified for health reasons may allow the right to medically assisted insemination and a woman older than 42 years of age.

Since this problem is facing about 15% of the population of reproductive age, and to help its citizens, all modern states in their legal systems have laws dealing with medical treatment for infertility. In Croatia, the name of the law is the law on medically assisted insemination, and it regulates the conditions for exercising the right to medically assisted insemination and the rights, obligations and responsibilities of all participants in the procedures of medically assisted insemination [4]. In applying the procedures of medically assisted insemination protects the dignity and privacy of persons involved in the process of medically assisted insemination, as well as people who donate gametes or embryos. The procedures prescribed in this Law shall be carried out in order to achieve conception, pregnancy and birth of a healthy child, in accordance with the requirements of modern medical science and experience, with particular regard to the protection of health of women, reduction of risks of treatment and well-being of offspring.

Termination of pregnancy

In many jurisdictions, abortion has been, or continues to be, prohibited unless legal exceptions apply [5]. A notable exception to this approach can be found in the United States, where women have a constitutional right to privacy that encompasses the right to terminate a pregnancy (at least until viability, when the state's interest becomes compelling). However, in many jurisdictions where no such right is recognized, lawful abortion has historically been tethered to assessments of the danger posed by the pregnancy to the life or health of the woman. Although this "maternal health" exception has been

interpreted as broad enough to encompass abortion for serious fetal abnormalities, some jurisdictions have created a distinct exception to permit abortion to avoid the risk of "serious handicap." The impetus for such an exception has resulted from the tremendous recent advances in prenatal diagnosis. Although such advances have enabled these abortions to take place earlier in pregnancy, they have also enabled doctors to detect serious conditions only diagnosable later in pregnancy. Because these abortions sometimes occur after viability, arguments about "serious handicap" as a regulatory concept tend to converge upon arguments about the status of the fetus as birth approaches.

The purpose of pre-natal diagnosis is to discover as much as possible about the unborn child and, in particular, to detect any abnormality or illness [6]. Once a diagnosis has been made and with due recognition of any potential limitations on the accuracy of diagnosis, the information may be used in one of the following ways:

- It may be used as a reason for abortion;
- It may indicate the need for treatment, either in utero or immediately after birth;
- It may identify an indication for pre-term delivery or delivery in an environment where special facilities are available;
- It may be used to prepare the parents or the staff involved for an adverse outcome, although nothing can be done to alter this or a decision has been made not to alter this.

The consequences of failure to make a pre-natal diagnosis may be a complaint or legal action under any of the following headings. Parents may claim that, if they knew of a fetal abnormality in advance, they may have sought a pregnancy termination. The parents or the child may claim that a failure to treat in utero or immediately after birth might have led to permanent damage or handicap that, otherwise, could have been avoided. Finally, the parents may claim that they had a right to know the abnormal results of tests taken antenatally, so that they could prepare themselves for a baby with an impairment or abnormality.

The women who need help to find funding are primarily those of limited means financially, educationally, and emotionally [7]. They are often single parents and women who are struggling to make ends meet, living paycheck to paycheck. Regardless of why a woman is choosing to have an abortion, having to seek out financial assistance is a humbling experience. Many women wait to have an abortion because either they are not aware that funding exists or they are trying to raise the funds themselves. Yet every week a woman waits, she is aware the pregnancy is growing and developing, which adds to her emotional stress. Many women unwittingly wait too long to find help and either have higher fees or are no longer able to have abortions due to the longer gestation of the pregnancy.

Legally induced abortion represents a medical service that, for example, in the Republic of Croatia provides in health institutions within the national public health system, and in private medical institutions which provide their services on the market of medical services. Whether there is a medical institution of the state system or a private institution, the cost of a medical procedure abortions are not covered by health insurance, but they should be paid from personal funds. This fact clearly shows that this is a medical service that was provided to women for financial compensation and therefore falls within the scope of legislation regulating relations in the market.

Intentional termination of pregnancy

Intentional termination of pregnancy, abortion, lat. Abortion artificialis, not necessarily always associated with unplanned pregnancy. Many women became pregnant unplanned, but after a short deliberation still decide to keep the baby. In these cases, somewhat extent will change life's priorities, everyday's business schedule and after giving birth will definitely decide whether to keep the baby or put up for adoption. A number of women who unexpectedly carried away, however, will decide on abortion. Reasons why women decide to have an abortion is a lot. Sometimes its education that is underway, sometimes partner whom are women still not seen as the father of their child, sometimes heavy financial or family situation. More recently, and increasingly, women choose to abort the pregnancy and for fear of losing their jobs.

Spontaneous abortion

Pregnancy losses before 28 weeks due to natural causes are termed spontaneous abortions. Although they may occur at any stage of the first seven months they tend to fall into four groups [8].

Abortions before eight weeks may be hardly more than a slightly delayed and rather heavy menstrual loss, though the greater the delay the more bleeding tends to occur. There is an increased incidence of genetic defects in the aborted tissue and it is likely that some abortions are due to such abnormalities.

The second group tend to occur more commonly at the time of the second or third missed period (that is, at about the eighth or 12th week) and the underlying cause is usually considered to be unknown, though some gynaecologists believe that partial failure of progesterone production by the corpus luteum may play a part in some cases.

'Mid trimester' abortions most often happen at 16–18 weeks and the greater proportion of these are due to cervical incompetence when the cervix uteri fails to remain closed and, by dilating inappropriately early, removes support from the membranes surrounding the pregnancy which then rupture. The cervical weakness may be due to past surgical damage (for example, cone biopsy), previous over dilatation or, rather rarely, an intrinsic defect. Cervical incompetence is correctly (though not infallibly) treated by the insertion of a supporting suture around the cervix in the next pregnancy (usually at about

14 weeks) before the cervix has begun to dilate. Occasionally, and providing the membranes have not ruptured, the suture may be attempted when the cervix has already opened but such 'salvage sutures' have a low rate of success. The suture is called 'cervical cerclage', of which the Shirodkar and MacDonald suture are two variants.

The final group of abortions tends to take place at 22–24 weeks and most of these are due to the premature rupture of the membranes, often in association with infection.

According to the strict definition, premature labour cannot occur before the 28th week but, in common with all the causes just mentioned, its effects may become manifest over quite a long period, perhaps as early as twenty weeks. The author managed the fourth pregnancy of a woman whose previous three conceptions had ended in loss of the babies at 28, 27 and 24 weeks, despite cervical cerclage in the second and third. A careful history revealed that, on each occasion, on initial admission to hospital, the cervix had been closed and this was followed by the pain of uterine contractions for several hours before the abortion finally took place. This suggested that the problem was not one of cervical incompetence but rather that the uterus was going into labour too early. No suture was inserted but treatment with a tocolytic enabled the pregnancy to go on to the 36th week and resulted in the birth of a healthy daughter.

Legal assumptions for abortion

The Act on health measures for the realization of the right to free decision-making on childbirth [9] is a law that in the Republic of Croatia allows women and men to become parents. The right of a man to decide freely on childbirth can be limited only to protect the health, under the terms and in the manner determined by that law. Because of its legal nature, for that law we can said to represent a good starting point when considering the termination of pregnancy.

Abortion is a medical procedure. Abortion can be made until the expiry of ten weeks from the date of conception. After the expiry of ten weeks from the date of conception, abortion may be performed only under the conditions and according to the procedure established by law. Abortion should not be performed when it is determined that the weight could impair the health of women.

Abortion is done at the request of the pregnant woman. Along with the request for termination of pregnancy submitted by a minor, who has not reached 16 years of age, is required and the consent of a parent or guardian with the consent of the guardianship.

Pregnant woman addresses with a request for termination of pregnancy Health organization that performing an abortion, according to their choice. If the conditions for termination of pregnancy pregnant women referred to a doctor who performs abortions.

After the expiry of ten weeks from the date of conception, may be granted termination of pregnancy, with the consent or at the request of the pregnant woman, in the cases:

- When on the basis of medical indications that otherwise cannot save lives or eliminate impairment of health of women during pregnancy, childbirth or after childbirth;
- When based on medical indications and findings of medical science can expect that child will be born with severe congenital physical or mental defects;
- when conception occurred in connection of rape, sexual intercourse with a helpless person, sexual intercourse by abuse of position, sexual intercourse with the child or incest.

A process according to claim for pregnancy is urgent. Pregnant women because abortion can pay hospitals and other licensed health care facilities.

Appeal of conscience

The appeal of conscience is allowed legal act of disobedience which justifies the conflict between certain parts of law enforcement and deep religious, moral, philosophical or political beliefs of the person that work should be done. The essential premise of human rights is that the articulation of their rights does not infringe or deny the rights of others. Or that too much freedom for some does not result in less freedom for others. This is where it is contained all the complexity and sensitivity of the manifestations form of freedom of conscience, including the definition of the position and status of the institution of conscientious objection. In practice arise numerous and not at all naïve problems, and the most numerous complaints derived from religious beliefs, for example, those employed in public health institutions by refusing to perform an abortion or euthanasia, if legally permitted, or in individuals as a private person, rejection of mandatory insurance. The country is, however, authorized to impose laws regardless of religious, ideological, political, philosophical and other beliefs of its citizens. In most of the laws in the world is not specially treated, nor in the Constitution and laws incorporated institute of conscience, rather it is associated with the chapters on freedom of thought, conscience, religion, belief, etc.

If doctor appealing on conscience for any reason, same doctor of its decision of appealing of conscience must on time inform the patient and refer him to another doctor in the same field.

Illegal termination of pregnancy

Criminal laws in states around the world are considering this extremely important question. For example, illegal abortion is a crime which is described in Article 115 of the Croatian Criminal Code [10]:

- (1) *Whoever, contrary to regulations on abortion, a pregnant person executed encourage it or assists a termination of pregnancy with her consent, shall be punished by imprisonment of up to three years.*
- (2) *If the crime referred to in paragraph 1 of this Article caused death of a pregnant person or his health is severely damaged, shall be punished by imprisonment for one to ten years.*

(3) *If a pregnant person without her consent perform abortions, shall be punished by imprisonment for one to eight years.*

(4) *If the crime referred to in paragraph 3 of this Article caused death of a pregnant person or his health is severely damaged, shall be punished by imprisonment of three to fifteen years.*

(5) *The attempt of the crime referred to in paragraph 1 of this Article shall be punished.*

The crime of illegal abortion, protect directly the body of pregnant women [11]. This protection is established indirectly unborn fetus as a human being. Abortion is any discharge or separation of the fetus from the uterus of a woman before the birth process.

Termination of pregnancy (abortion) can be seen as legal or medical phenomenon. Medically, abortion is the termination of pregnancy at the time when the fetus is not viable outside of the uterus.

The basic work has three forms: execution, initiating execution or helping the execution of abortion with the consent of women contrary to regulations on abortion. Consent should be expressed in full awareness, voluntary, without the use of force or threats. A woman needs to be able to consent.

An important feature of normative meaning is treatment contrary to regulations, which in some cases permit abortion. Cases in which an abortion are provided based on specific indication or reason to allow abortions.

Starting abortions has actually attempted criminal act. However, the law provides for it as a completed criminal act. This means that the work completed even though the result is not damaged or destroyed. Helping the abortion is equated with the execution of abortion.

Perpetrator may be any person, but in practice, most often health care workers. For guilt is necessary awareness of unlawfulness, which means that the perpetrator must be aware that it violates the regulations governing the termination of pregnancy.

Conclusion

Abortion is the termination of pregnancy before the fetus is not equip for life outside of the uterus. If the pregnancy is terminated before 28 weeks of pregnancy, it is considered abortion, but if it ends after 28 weeks, is considered a birth.

It is clear that conscientious objection for doctors from personal ethical reasons do not want to participate in a particular medical procedure legally guaranteed to every individual. However, this is only the personal decision of the individual and therefore the possibility cannot extend to the entire institution as such. Any medical institution that participates in the national health care system and who is capable and legally obliged to provide a medical procedure

abortion has a clear legal obligation to ensure effective access to this type of medical services to all women who are using their constitutionally guaranteed freedom of choice brought there's no easy personal decision.

Legal regulations which regulating termination of pregnancy are different in different countries. In recent years, an increasing number of countries whose liberalized their position towards this procedure, but it is still in the legislation can be found all variations on a theme from a complete ban to the complete freedom to perform abortions.

References

1. Aničić Miljenko (2007) marital infertility and its options 77: 181 – 216. [Link: https://goo.gl/3iwCX0](https://goo.gl/3iwCX0)
2. Franjić S (2016) Medically Assisted Insemination J Androl Gynaecol. [Link: https://goo.gl/r0TJ2K](https://goo.gl/r0TJ2K)
3. Wellman Carl (2005) Medical Law and Moral Rights Springer Dordrecht. [Link: https://goo.gl/wB6cbq](https://goo.gl/wB6cbq)
4. (2012) Zakon o medicinski pomognutoj oplodnji (Law on Medically Assisted Insemination) – NN 86.
5. Karpin Isabel, Savell Kristin (2012) Perfecting Pregnancy - Law, Disability, and the Future of Reproduction 106-107. [Link: https://goo.gl/dlO8iU](https://goo.gl/dlO8iU)
6. Hare John, Greenway Heather (2000) Obstetrics Cavendish Publishing Limited, London, Sydney, 97-98.
7. Needle RB, Walker Lenore EA (2008) Abortion Counseling - A Clinician's Guide to Psychology, Legislation, Politics, and Competency Springer Publishing Company, 3-4.
8. Dutt Trevor P, Matthews MP (1999) Gynaecology 173–174.
9. The Act on health measures for the realization of the right to free decision-making on childbirth – NN 18/1978.; 88/2009.
10. Kazneni zakon – NN 125/2011.; 144/2012.; 56/2015.; 61/2015. [Link: https://goo.gl/wYlxJm](https://goo.gl/wYlxJm)
11. Pavišić Berislav, Grozdanić Velinka, Veić Petar (2007) Komentar Kaznenog zakona, III. izmijenjeno i dopunjeno izdanje 327-328.